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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 LEROY WILLIAMS,)
9)
Plaintiff,) Case No. C10-7-JCC-JPD
10 v.)
11) REPORT AND
CLAIRE GILCHRIST,) RECOMMENDATION
12)
Defendant.)

13 *Pro se* plaintiff, who is currently incarcerated at the Washington Corrections Center in
14 Shelton, Washington, has submitted a proposed complaint under 42 U.S.C. § 1983 and an
15 application to proceed *in forma pauperis*. (Dkts. 1, 4.) His complaint names Claire Gilchrist,
16 identified as “Witness,” as the sole defendant. Plaintiff asserts that he does not know and has
17 never seen defendant. Plaintiff states, “I would like to [k]no[w] if [defendant] seen and heard
18 when the police brought my son home on 6-14-07.” (Dkt. 1-2, at 3.) Although plaintiff does not
19 state that defendant testified at trial—and does not know the content of what, if anything,
20 defendant said to anyone—he seeks prosecution of defendant for perjury and aiding in the
21 kidnapping of his children by the Seattle Police Department. (Dkt. 1-2, at 4.) He also seeks
22 compensation for loss of work and contracts. (*Id.*) The Court has reviewed plaintiff’s proposed
23 complaint as required by 28 U.S.C. § 1915A(a) and finds that the complaint fails to state a claim

1 upon which relief may be granted and appears to be seeking monetary relief against a defendant
2 who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b).

3 To sustain a cause of action under 42 U.S.C. § 1983, plaintiff must show (a) that he
4 suffered a violation of rights protected by the Constitution or created by a federal statute, and (b)
5 that the violation was proximately caused by a person acting under color of state law. *Crumpton*
6 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, plaintiff must allege
7 facts showing how individually named defendants caused or personally participated in causing
8 the harm alleged in the complaint. *Arnold v. I.B.M.*, 637 F.2d 1350, 1355 (9th Cir. 1981).

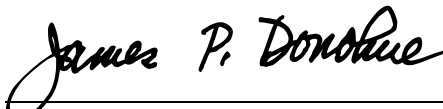
9 Plaintiff's complaint does not identify a constitutional or statutory right that he alleges to
10 have been violated. In addition, it appears that the sole defendant he names is a private citizen
11 who, at most, testified against plaintiff in a court proceeding. Generally, private parties do not
12 act under color of state law. *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991). In addition,
13 individuals who serve as witnesses are absolutely immune from suit for damages with respect to
14 their testimony. *Paine v. City of Lompoc*, 265 F.2d 975, 980 (9th Cir. 2001). Plaintiff has thus
15 failed to state a claim on which relief may be granted, and appears to be seeking monetary relief
16 from a defendant who is immune from such relief.

17 Where a pro se litigant's complaint fails to state a claim on which relief may be granted,
18 the Court generally grants him the opportunity to amend the complaint. *Lucas v. Dep't of*
19 *Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam). However, the Court may deny leave
20 to amend if "it is absolutely clear that no amendment can cure the defect." *Id.* Here, the Court
21 does not see how plaintiff could amend his complaint to cure the above defects. Even if plaintiff
22 could identify a constitutional or statutory right that he alleges to have been violated, he is
23 asserting claims against a defendant who is not a state actor and who may have absolute

1 immunity from this suit with respect to defendant's testimony. Plaintiff would have to allege a
2 completely new cause of action, against a different defendant, in order to cure the deficiencies
3 inherent in his complaint. This is more than the rule of liberally granting leave to amend would
4 seem to require. Accordingly, the Court concludes that it is not required to grant plaintiff leave
5 to amend. If, however, plaintiff believes he can cure the deficiencies in his complaint, he should
6 file an amended complaint with his objections to this Report and Recommendation, if any.¹

7 For the foregoing reasons, the Court recommends that this action be DISMISSED with
8 prejudice under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b) for failure to state a claim upon which
9 relief may be granted and for seeking monetary relief against a defendant who is immune from
10 such relief, and that plaintiff's application to proceed in forma pauperis be DENIED as moot.
11 The Court further recommends that this dismissal constitute a strike for purposes of 28 U.S.C.
12 § 1915(g). A proposed Order accompanies this Report and Recommendation.

13 DATED this 12th day of February, 2010.

14 
15 JAMES P. DONOHUE
16 United States Magistrate Judge
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19 ¹ The absence of facts in plaintiff's statement of his claim makes it difficult to discern why
20 plaintiff believes he is entitled to compensation for loss of work and contracts. (Dkt. 1-2, at 4.)
21 However, it appears possible that plaintiff intends, by way of this action, to challenge in some
22 fashion the lawfulness of his current confinement. In *Heck v. Humphrey*, 512 U.S. 477 (1994),
23 the United States Supreme Court held that a § 1983 claim that calls into question the lawfulness
of a plaintiff's conviction or confinement does not accrue "unless and until the conviction or
sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas
corpus." *Id.* at 489. Thus, to the extent plaintiff may be seeking to challenge the fact of his
current confinement by way of this § 1983 action, it appears likely such claims will be barred by
Heck. Plaintiff is also advised that the Court has no authority to initiate criminal proceedings
against defendant.